

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 23 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0198-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RON DAMON BROWN,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009117976001DT

Honorable Lisa M. Roberts, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Ron Brown

Florence
In Propria Persona

MILLER, Judge.

¶1 Petitioner Ron Brown seeks review of the trial court's order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We review a trial court's decision dismissing a Rule 32 proceeding for an abuse of discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Brown has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Brown was convicted of two counts of sexual conduct with a minor and one count of sexual abuse. The trial court imposed a presumptive five-year prison term on the sexual abuse count and consecutive, aggravated, life sentences on the sexual conduct counts. Brown's convictions and sentences were affirmed on appeal. *State v. Brown*, No. 1 CA-CR 10-0428 (memorandum decision filed Sept. 8, 2011). On February 8, 2012, more than three months after the mandate issued on his appeal, Brown initiated a proceeding for post-conviction relief, stating he was without fault in failing to timely file his notice. The trial court summarily denied the notice. Brown did not seek appellate review of the summary denial.

¶3 On April 4, 2012, Brown filed a second notice of post-conviction relief, claiming, as he had in his first proceeding, that he had not known of the time limits in which to file a notice of post-conviction relief after his appeal and requesting a "delayed petition." The trial court again summarily denied relief. Brown filed a timely petition for review on April 30, 2012.

¶4 On review, Brown repeats that he was unaware of the time limits in which to file a notice of post-conviction relief and appears to challenge the trial court's ruling in both proceedings. But Brown cannot challenge the court's decision in the first proceeding through a petition for review in this subsequent proceeding. The time to petition this court for review from the February 15, 2012 summary ruling passed on March 16, 2012. *See* Ariz. R. Crim. P. 32.9(c).

¶5 Finally, although claims made pursuant to Rule 32.1(f) may be exempt from preclusion under Rule 32.2, Brown's claim was conclusively adjudicated in the

previous proceeding and is now barred by res judicata. *See State v. Little*, 87 Ariz. 295, 304, 350 P.2d 756, 761-62 (1960) (doctrine of res judicata generally applies in criminal cases). The trial court did not abuse its discretion in dismissing his second notice. Therefore, although we grant the petition for review, we deny relief.

/s/ Michael Miller
MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge